IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD

HON'BLE Mr. JUSTICE R. SUBHASH REDDY

Writ Petition No.29925 of 1998

MONDAY, THE TWENTY FIFTH DAY OF JUNE TWO THOUSAND AND SEVEN

Between:

D. Sekhara Babu, S/o. Sayob, Hindu, Male,
Aged about 45 years, Prabhu Sweet Stall,
Shop No.3, Prakasam Municipal Shopping
Complex, Narasimharaopeta, Eluru-2, West
Godavari District.

… Petitioner

And

The Eluru Municipal Corporation, Eluru, West
Godavari District, rep. by its Commissioner,
And another.

… Respondents

Order:

In this Writ Petition, petitioner has questioned the notices dated 06-05-1998 and 26-06-1998 issued by the first respondent under the provisions of the Andhra Pradesh Municipalities Act, 1965 (for short 'the Act') evicting him from Shop No.3 of Prakasam Municipal

Shopping Complex, Eluru.

2. The erstwhile Eluru Municipality, presently Municipal Corporation, had constructed a shopping complex and Shop No.3 of the said complex was given on lease to the petitioner to run a sweet shop therein. In the affidavit filed in support of the Writ Petition, it is stated that petitioner is eking out livelihood by running the said shop. The impugned notices have been issued to the petitioner in exercise of powers under Sections 194 (1) and (2) respectively on the ground that the petitioner was not using the leased premises for his own purpose and he has sublet the same to one Mr. Koppineedi Subba Rao.

3. The case of the petitioner is that the premises was not sublet to any third party as alleged. Mainly, the impugned notices have been questioned on the ground that they have not been preceeded by any notice and opportunity.

4. Respondents have filed counter affidavit stating that as they received a request from the petitioner for renewing the lease for three more years from 01-04-1998, Shop No.3, that was leased out to the petitioner, was inspected, wherein it was found that he has sublet the same illegally and unauthorisedly to one Mr. Koppineedi Subba Rao.

5. This court, while admitting the Writ Petition, by order dated 02-11-1998, in WPMP No.36588 of 1998, granted interim stay of dispossession and extended the same pending further orders, and the said orders have been continuing all along.

6. Learned counsel for the respondents submits that he has no instructions as to whether the lease granted to the petitioner has been renewed after expiry of the lease period.

7. A perusal of the orders under challenge does not indicate any notice and opportunity given to the petitioner and there is also no definite finding recorded with regard to sublease. It is merely stated that it is learnt that the shop in question was sublet to Mr. Koppineedi Subba Rao. Though respondents have stated in the counter affidavit that in view of the report of the inspecting authority, it was resolved by the Municipal Council to evict the petitioner and hence the impugned notices have been issued, but it is to be seen that eviction proceedings have been initiated only on the allegation of subletting. Unless there is a specific show cause notice on the aspect of subletting, no order of eviction could have been passed. Hence, I deem it a fit case to set aside the impugned notices and remit the matter for fresh consideration. Accordingly, the impugned notices are set aside and the matter is remitted to the respondents for fresh consideration.

8. If the lease granted to the petitioner has been renewed and he is continuing in possession of the premises in question, respondents shall issue a fresh notice to him and pass appropriate orders in accordance with law.

9. The Writ Petition is allowed to the extent indicated above. No order as to costs.

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JUSTICE R. SUBHASH REDDY.

June 25, 2007
MRR